[Cite as *Chiarovano v. Dept. of Rehab. & Corr.*, 2005-Ohio-2124.]

IN THE COURT OF CLAIMS OF OHIO

PAUL G. CHIAROVANO	:	
Plaintiff	:	CASE NO. 2001-07301 Judge J. Craig Wright
v.	:	Magistrate Steven A. Larson
DEPARTMENT OF REHABILITATION AND CORRECTION	:	MAGISTRATE DECISION
Defendant	:	

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{¶1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Prior to February 1998, plaintiff was housed at Madison Correctional Institution (MaCI). During that time, plaintiff was granted a bottom bunk restriction due to "self-reporting" a history of seizures. However, in February 1998, when plaintiff was transferred to his parent institution, Southeastern Correctional Institution (SCI), it was determined that he did not qualify for a bottom bunk assignment. Plaintiff contends that on March 31, 1998, he was injured when he fell out of his top bunk after suffering a seizure.

{¶3} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight

which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, 702.

{¶4} Plaintiff testified that he had suffered from intermittent seizure activity throughout his life. Upon arriving at SCI, plaintiff was given a thorough medical exam and although he informed the physician of his medical history, he was not issued a bottom bunk restriction. Plaintiff stated that he had spoken with a number of people about having his restriction from MaCI reinstated; however, he was directed to apply for a new restriction. On March 26, 1998, plaintiff filed an informal complaint with the warden and on March 30, plaintiff received a response from the SCI physician that stated: "Inmate Chiarovano does not qualify for bottom bunk." (Defendant's Exhibit E.)

{¶5} Plaintiff testified that he could not recall any details about the March 31, fall. He stated that he could remember only that he went to bed at lights out and that he woke up on the floor. Upon cross-examination, plaintiff admitted that he did not take medication to control his seizures. According to plaintiff, he had a negative reaction to the brand of seizure medication he had previously used and he was unwilling to try a new medication.

{¶6} Corrections Officer Michael Parmley was assigned to plaintiff's dorm on the night of plaintiff's fall. Parmley discovered plaintiff on the floor and radioed for medical assistance. Although Parmley reported that plaintiff was possibly having a seizure, plaintiff did not show any sign of physical trauma. Within three to four minutes of contacting the medical department, Bill Copley, the on-duty nurse arrived to administer medical care.

{¶7} Parmley was approached by plaintiff regarding his bottom bunk restriction the week prior to the fall. At that time, Parmley contacted medical personnel and was informed that plaintiff did not have a restriction. Plaintiff was then advised by Parmley that a restriction from a prior institution had no effect at SCI and that he would have to attend one of the nurse's sick calls to address the situation. Parmley also noted that the vast majority

of inmates prefer to have a bottom bunk and that inmates have made false or exaggerated medical claims in order to receive the assignment.

{¶8} When Copley responded to the request for medical assistance he found plaintiff lying face up on the floor and noted that he was responsive to verbal stimuli. Plaintiff was able to tell Copley the areas of his body that were injured and he did not show any symptoms of post-seizure activity such as rapid breathing, incontinence, sweating, and confusion. While Copley initially believed plaintiff had suffered a hematoma as a result of his fall, it was later diagnosed as a fatty tumor which was not a result of the fall. At trial, Copley confirmed that the results of EEGs taken on April 10, 1998, and September 19, 2000, were negative for epilepsy and seizure disorder. (Defendant's Exhibit A.)

{¶9} Copley explained that bottom bunk restrictions are determined by the physician at individual institutions because every institution has different requirements due to the security level and specific inmate population. Medical evaluations are also required upon entry into a new institution because unfounded medical requests for bottom bunk restrictions are fielded by the medical department daily and the evaluation allows physicians to screen inmates' claims. In order to obtain a bottom bunk restriction, the medical examiner must find a legitimate medical reason for the restriction.

{¶10} Based upon the evidence presented at trial, the court is not persuaded that plaintiff suffered from a medically-diagnosed seizure disorder or that a seizure caused plaintiff to fall from his top bunk. The only evidence of seizure activity presented by plaintiff was his own testimony and his self-reporting to various medical personnel. To the contrary, the court is persuaded by the evidence showing that there was no medical diagnosis of seizure activity and that plaintiff did not suffer from a seizure on the evening of March 31, 1998. Two EEG tests confirmed that plaintiff did not demonstrate any signs of epilepsy or seizure disorder, and Copley verified that after plaintiff's fall he showed no symptoms of post-seizure activity. Therefore, the court finds that plaintiff has failed to demonstrate that he suffered from a seizure disorder.

{¶11} For the foregoing reasons, the court concludes that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶12} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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STEVEN A. LARSON
Magistrate

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LM/cmd
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